

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2201 OF 2018

Bhushan Narayan Utekar

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Ganesh Gole I/b. Ateet Shirodkar for the Applicant.

Ms. P.N.Dabholkar, APP for the State.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : OCTOBER 24, 2018.

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid applicant apprehending his arrest in C.R.No. 159 of 2018 registered with Kamothe Police Station for offences under Section 376, 506 of IPC.

2. Heard Mr. Gole, the learned Counsel for the applicant and Shri Ms. Dabholkar, the learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The first informant is a married woman aged about 28 years of

age. She has lodged the FIR dated 20th September, 2018 alleging that the applicant herein had committed rape, and further threatened to cause her death. A perusal of the FIR reveals that the first informant was married on 5th January, 2013 and was residing with her husband at Dubai. In February, 2017, while she was in Dubai, she came in contact with the applicant through social networking sites. She returned to India in March 2017. She claims that on 24th June, 2017 the applicant came to her house on the pretext of using the washroom and had sexual intercourse with her. She claims that thereafter the applicant used to constantly sexually abuse her under the threat that he had recorded her obscene pictures.

4. The first information report prima facie reveals that the relationship between the applicant and the first informant was consensual. The legal notice dated 2nd April, 2018 issued to the first informant by her husband, as well as the whatsapp messages, and the photographs which are produced on record are also suggestive of the fact that the relationship between the applicant and the first informant was consensual. Suffice it to say that consensual relationship between two adults does not constitute rape within the

meaning of Section 375 of IPC. The nature of the allegations leveled against the applicant would justify pre-arrest bail. Furthermore, the applicant is a permanent resident of Kamothe, Panvel. There are no chances of his absconding or thwarting the course of justice. The applicant has no criminal antecedents.

5. Considering the above facts and circumstances, the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the applicant in Crime No.159 of 2018 registered with Kamothe Police Station, the applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two solvent sureties in the like amount,;
- (ii) The applicant shall report to the Investigating Officer for four days from Monday 29th October, 2018, from 11.00 a.m. to 2.00 p.m. and further as and when required by the Investigating Officer for the purpose of investigation and interrogation.
- (iii) The applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer.
- (iv) The applicant shall not change his residential address without prior intimation to the Investigation Officer.

(v) The applicant shall not interfere with the complainant and the other witnesses in any manner.

(ANUJA PRABHUDESSAI, J.)